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§ 32.4 Deviations.

(a) *Individual deviations.* Individual deviations affecting only one award may be approved by DoD Components in accordance with procedures stated in 32 CFR 21.335(a) and 21.340.

(b) *Small awards.* DoD Components may apply less restrictive requirements than the provisions of this part when awarding small awards, except for those requirements which are statutory.

(c) *Other class deviations.* (1) For classes of awards other than small awards, the Director of Defense Research and Engineering (DDR&E), or his or her designee, may grant exceptions from the requirements of this part:

(i) With the written concurrence of the Office of the Management and Budget (OMB). The DDR&E, or his or her designee, shall provide written notification to OMB of the Department of Defense's intention to grant a class deviation; and

(ii) When exceptions are not prohibited by statute.

(2) DoD Components shall request approval for such deviations in accordance with 32 CFR 21.335(b) and 21.340. However, in the interest of maximum uniformity, exceptions from the requirements of this part shall be permitted only in unusual circumstances.

[63 FR 12188, Mar. 12, 1998, as amended at 68 FR 47160, Aug. 7, 2003]

§ 32.5 Subawards.

Unless sections of this part specifically exclude subrecipients from coverage, the provisions of this part shall be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals or other non-profit organizations. State and local government subrecipients are subject to the provisions of 32 CFR part 33. Subrecipients that are for-profit organizations are subject to 32 CFR part 34.

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Subpart B—Pre-Award Requirements

§ 32.10 Purpose.

Sections 32.11 through 32.17 prescribe application forms and instructions and other pre-award matters.

§ 32.11 Pre-award policies.

(a) *Use of grants, cooperative agreements, and contracts.* (1) OMB Circular A–110 states that:

(i) In each instance, the Federal awarding agency shall decide on the appropriate award instrument (i.e., grant, cooperative agreement, or contract).

(ii) The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–6308) governs the use of grants, cooperative agreements, and contracts. Under that Act:

(A) A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute.

(B) Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(C) The statutory criterion for choosing between grants and cooperative agreements is that for the latter, “substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.”

(2) In selecting the appropriate award instruments, DoD Components' grants officers shall comply with the DoD implementation of the Federal Grant and Cooperative Agreement Act at 32 CFR part 22, subpart B.

(b) *Public notice and priority setting.* As a matter of Governmentwide policy, Federal awarding agencies shall notify the public of intended funding priorities for programs that use discretionary awards, unless funding priorities are established by Federal statute. For DoD Components, compliance with competition policies and statutory requirements implemented in 32 CFR part 22, subpart C, shall constitute

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compliance with this Governmentwide policy.

[63 FR 12188, Mar. 12, 1998, as amended at 68 FR 47160, Aug. 7, 2003]

§ 32.12 Forms for applying for Federal assistance.

(a) DoD Components shall comply with the applicable report clearance requirements of 5 CFR part 1320, "Controlling Paperwork Burdens on the Public," with regard to all forms used in place of or as a supplement to the Standard Form 424² (SF-424) series.

(b) Applicants shall use the SF-424 series or those forms and instructions prescribed by DoD Components.

(c) For Federal programs covered by E.O. 12372 (3 CFR, 1982 Comp., p. 197), "Intergovernmental Review of Federal Programs," the applicant shall complete the appropriate sections of the SF-424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from the DoD Component or the Catalog of Federal Domestic Assistance. The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review.

(d) DoD Components that do not use the SF-424 form should indicate whether the application is subject to review by the State under E.O. 12372.

§ 32.13 Debarment and suspension.

DoD Components and recipients shall comply with the nonprocurement debarment and suspension common rule at 32 CFR part 25. This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

²For copies of Standard Forms listed in this part, contact regional grants administration offices of the Office of Naval Research. Addresses for the offices are listed in the "DoD Directory of Contract Administration Services Components," DLAH 4105.4, which can be obtained from: Defense Logistics Agency, Publications Distribution Division (DASC-WDM), 8725 John J. Kingman Rd., Suite 0119, Fort Belvoir, VA 22060-6220.

EFFECTIVE DATE NOTE: At 72 FR 34998, June 26, 2007, § 32.13 was revised, effective Aug. 27, 2007. For the convenience of the user, the revised text is set forth as follows:

§ 32.13 Debarment and suspension.

DoD Components and recipients shall comply with the policy and procedural requirements in the OMB guidance on nonprocurement debarment and suspension (2 CFR part 180), as implemented by the Department of Defense in 2 CFR part 1125. Those policies and procedures restrict subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

§ 32.14 Special award conditions.

(a) DoD Components may impose additional requirements as needed, over and above those provided in this part, if an applicant or recipient:

- (1) Has a history of poor performance;
- (2) Is not financially stable;

(3) Has a management system that does not meet the standards prescribed in this part;

- (4) Has not conformed to the terms and conditions of a previous award; or
- (5) Is not otherwise responsible.

(b) Before imposing additional requirements, DoD Components shall notify the applicant or recipient in writing as to:

(1) The nature of the additional requirements;

(2) The reason why the additional requirements are being imposed;

(3) The nature of the corrective action needed;

(4) The time allowed for completing the corrective actions; and

(5) The method for requesting reconsideration of the additional requirements imposed.

(c) Any special conditions shall be promptly removed once the conditions that prompted them have been corrected.

(d) Grants officers:

(1) Should coordinate the imposition and removal of special award conditions with the cognizant grants administration office identified in 32 CFR 22.710.

(2) Shall include in the award file the written notification to the recipient, described in paragraph (b) of this section, and the documentation required by 32 CFR 22.410(b).